



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.****Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

---

**LEARY v. BRIGGS.**

Jan. 16, 1913.

[76 S. E. 907.]

**Appeal and Error (§ 518\*)—Record—Presentation of Grounds of Review—Stricken Pleas.**—Pleas in abatement which have been stricken by the court are not a part of the record unless made such by a bill of exceptions, and hence the court's action in striking them is not reviewable in the absence of such a bill.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2342-2355; Dec. Dig. § 518.\* 5 Va.-W. Va. Enc. Dig. 375.]

Error to Circuit Court, Prince William County.

Action by Edwin M. Briggs against Henry G. Leary. Judgment for plaintiff, and defendant brings error. Writ of error dismissed.

*Robt. A. Hutchison*, of Manassas, for plaintiff in error.

*C. E. Nicol*, of Alexander, and *Bryan Gordon*, of Manassas, for defendant in error.

---

**C. C. SMOOT & SONS CO., Inc., v. JOHNSON.**

Jan. 16, 1913.

[76 S. E. 911.]

**1. Appeal and Error (§ 1177\*)—Demurrer to Evidence—Compelling Joinder in Demurrer—Effect.**—An error by the trial court in compelling the plaintiff to join in defendant's demurrer to the evidence not containing a statement of the evidence would not require a dismissal of the writ of error to review the court's ruling on such demurrer on the ground that it was improvidently awarded, but would require a reversal and a remand for a new trial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4597-4620; Dec. Dig. § 1177.\* 1 Va.-W. Va. Enc. Dig. 632; 4 Va.-W. Va. Enc. Dig. 546; 14 Va.-W. Va. Enc. Dig. 108, 331; 15 Va.-W. Va. Enc. Dig. 76, 284.]

**2. Appeal and Error (§ 973\*)—Demurrer to Evidence—Compelling Joinder.**—On a trial, the evidence was taken in shorthand by the court stenographer. Defendant demurred to the evidence and as-

---

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

signed the grounds of demurrer in writing, but plaintiff refused to join therein because a statement of the evidence was not filed with the demurrer. The court compelled him to join in the demurrer and permitted the evidence to be written out and filed later before the argument on the demurrer. Held, that the court did not abuse its discretion in this respect, especially where counsel stipulated that the demurrer to the evidence might be written up and filed later before the judge in vacation, to have the same effect as if it was then filed.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3846; Dec. Dig. § 973.\* 1 Va.-W. Va. Enc. Dig. 458; 4 Va.-W. Va. Enc. Dig. 532.]

**3. Master and Servant (§ 236\*)—Liability for Injuries—Contributory Negligence—Selecting Dangerous Way.**—Where plaintiff, a boy 15 years old, employed in a tannery, in going to the scouring room, passed between two machines, although he knew that another way was more safe, and remained between the two machines for several minutes, until he was struck and knocked against one of them by a side of leather handled by another employee who was not aware of his presence, he was guilty of contributory negligence precluding a recovery, though he followed another employee whom he had been directed to accompany to the scouring room, since where an employee can discharge his duties in two ways, one safe and the other dangerous, and voluntarily chooses the dangerous way and is injured in consequence, the employer is not liable.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 681, 683, 723-742; Dec. Dig. § 236.\* 9 Va.-W. Va. Enc. Dig. 714; 14 Va.-W. Va. Enc. Dig. 696; 15 Va.-W. Va. Enc. Dig. 656.]

**4. Master and Servant (§ 121\*)—Liability for Injuries—Guarding Machinery.**—An employer was not liable for injuries caused by his failure to guard a pulley on a machine, where he had no reasonable ground to apprehend danger of an accident from that source.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 228-231; Dec. Dig. § 121.\* 9 Va.-W. Va. Enc. Dig. 689; 14 Va.-W. Va. Enc. Dig. 689; 16 Va.-W. Va. Enc. Dig. 644.]

Error to Circuit Court, Rappahannock County.

Action by Bertram Johnson against C. C. Smoot & Sons Company, Incorporated. Judgment for plaintiff, and defendant brings error. Reversed and remanded.

*S. S. P. Patteson* and *J. H. Price*, both of Richmond, Va., for plaintiff in error.

*C. H. Keyser* and *Jas. F. Strother*, both of Washington, Va., for defendant in error.

---

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.